

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN MELENDEZ, ET AL.,

Plaintiffs,

v.

DIAZ, ET AL.,

Defendants.

Case No. 1:20-cv-01393-ADA-CDB (PC)

**ORDER DENYING ATTORNEY'S
REQUEST TO BE RELIEVED AS TO
PLAINTIFFS ALEJANDRINO
MANJARAZ AND PHILLIP BERNARD**

(Doc. 46)

Plaintiffs Phillip Bernard ("Bernard") and Alejandrino Manjaraz ("Manjaraz") are proceeding through counsel with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for jury trial before the Honorable Ana de Alba on February 6, 2024. (Doc. 44).

On April 3, 2023, Attorney Dennis Shawn Burkley filed an "Attorney's Request to Be Relieved as to Plaintiffs Alejandrino Manjaraz and Phillip Bernard." (Doc. 46). Attorney Burkley's request avers that he repeatedly tried to contact Bernard and Manjaraz for several months with no success. Attorney Burkley represents that he is no longer able to make accurate representations to the Court or to Defendants as to whether Manjaraz and Bernard desire to actively prosecute their case. (*Id.*) Attorney Burkley's withdrawal would render plaintiffs Bernard and Manjaraz in propria persona.

An attorney who has appeared may not withdraw leaving the client in propria persona

1 without leave of court and notice to the client, as well as all other parties who have appeared.

2 E.D. Cal. Local Rule 182(d). In addition, under Local Rule 182(d) requires as follows:

3 The attorney shall provide an affidavit stating the current or last
4 known address or addresses of the client and the efforts made to
5 notify the client of the motion to withdraw. Withdrawal as attorney
6 is governed by the Rules of Professional Conduct of the State Bar of
7 California, and the attorney shall conform to the requirements of
those Rules. The authority and duty of the attorney of record shall
continue until relieved by order of the Court issued hereunder. Leave
to withdraw may be granted to such appropriate conditions as the
Court deems fit.

8 (*Id.*) Attorney Burkley has not provided an affidavit stating the current or last known addresses
9 of Manjaraz or Bernard. In addition, there is no indication that Attorney Burkley has conformed
10 with the Rules of Professional Conduct of the State Bar of California. The California Rules of
11 Professional Conduct require that:

12 (d) A lawyer shall not terminate a representation until the lawyer has
13 taken reasonable* steps to avoid reasonably* foreseeable prejudice
14 to the rights of the client, such as giving the client sufficient notice
to permit the client to retain other counsel, and complying with
paragraph (e).

15 (e) Upon the termination of a representation for any reason:

16 (1) subject to any applicable protective order, non-disclosure
17 agreement, statute or regulation, the lawyer promptly shall release to
18 the client, at the request of the client, all client materials and
19 property. "Client materials and property" includes correspondence,
20 pleadings, deposition transcripts, experts' reports and other
writings,* exhibits, and physical evidence, whether in tangible,
electronic or other form, and other items reasonably* necessary to
the client's representation, whether the client has paid for them or
not; and

21 (2) the lawyer promptly shall refund any part of a fee or expense paid
22 in advance that the lawyer has not earned or incurred. This provision
23 is not applicable to a true retainer fee paid solely for the purpose of
ensuring the availability of the lawyer for the matter.

24 California Rule of Professional Conduct 1.16.¹ See *Chapman v. Ramada Inn, Vallejo*, No. 2:16-
25 cv-02415-KJM-DB, 2019 WL 13258030, *1-2 (E.D. Cal. Mar. 11, 2019).

26 For the foregoing reasons, the Court finds that counsel have not satisfied their duty to
27 comply with either Local Rule 182(d) or with California Rule of Professional Conduct 1.16.

28 ¹ The asterisks identify words or phrases defined by California Rule of Professional
Conduct 1.01.

1 Accordingly, the Court **DENIES** Attorney Burkley's request to withdraw, without prejudice to
2 renewal upon curing the deficiencies noted above.

3 IT IS SO ORDERED.

4 Dated: April 6, 2023


UNITED STATES MAGISTRATE JUDGE